Supreme Court of the United States.

No. 141.—October Term, 1905.

The Southern Pacific Railroad Company, Homer S. King, Trustee, and Central Trust Company of New York, Appellants.
vs.
The United States.

Appeal from the United States Circuit Court of Appeals for the Ninth Circuit.

[February 19, 1906.]

This was a suit begun in the Circuit Court of the United States for the Southern District of California, by bill filed April 13, 1899. The parties named as defendants were the Southern Pacific Railroad Company, the trustees in certain mortgages, and a number of individuals sued as representatives of a class. In a general way it may be said that the bill averred that a large body of lands, some thirty thousand acres and over, had been erroneously patented to the railroad company, and that portions thereof had been conveyed by it to *bona fide* purchasers. The relief sought was the confirmation of the titles of *bona fide* purchasers, the cancellation of the patents to the other lands, and the recovery from the railroad company of the value of the lands conveyed by it to *bona fide* purchasers in accordance with the terms of the acts of Congress of March 3, 1887, (24 Stat. 556;) February 12, 1896, (29 Stat. 6;) March 2, 1896, (29 Stat. 42,) providing for the adjustment of railroad land grants. After answers by the railroad company and some of the individual defendants, proofs were taken, and upon a hearing a decree was entered which in separate paragraphs specifically confirmed the titles to the several tracts held by *bona fide* purchasers, and adjudged that the United States recover from the railroad company the value of those lands, a sum amounting in the aggregate to $33,596.92. (117 Fed. Rep. 544.) This decree was affirmed by the Court of Appeals, (66 C. C. A. 581; 133 Fed. Rep. 651,) from whose decision the railroad company and the trustees appealed to this court.

Mr. Justice Brewer delivered the opinion of the Court.

The appellants challenge the decree on two grounds: First, that a suit in equity cannot be maintained, because there is a plain, adequate and complete remedy at law; and, second, that the United States cannot by

legislation create an obligation of the railroad company for the value of the land patented to and conveyed by it to *bona fide* purchasers.

No objection was made to the jurisdiction of the court as a court of equity by any pleading or before the hearing. It is undoubtedly true that a suit in equity cannot be maintained when there is a plain, adequate and complete remedy at law. Such is the mandate of the Revised Statutes, (R. S. sec. 723,) as well as the general rule in equity. *Lewis* v. *Cocks*, 23 Wall. 466; *Killian* v. *Ebbinghaus*, 110 U. S. 568; *Litchfield* v. *Ballou*, 114 U. S. 190; *Allen* v. *Pullman Car Company*, 139 U. S. 658. It is also true that this objection need not always be raised by some pleading, but may be presented on the hearing even in the appellate court, and if not suggested by counsel may be enforced by the court on its own motion. See authorities just cited. But on the other hand it is equally true that where the objection that the plaintiff has an adequate remedy at law is not made until the hearing, and the subject matter is of a class over which a court of equity has jurisdiction, the court is not necessarily obliged to entertain it, even though if taken *in limine* it might have been worthy of attention. *Wylie* v. *Coxe*, 15 How. 415, 420; *Reynes* v. *Dumont*, 130 U. S. 354, 395; *Kilbourn* v. *Sunderland*, Id. 505, 514; *Brown* v. *Lake Superior Iron Company*, 134 U. S. 530; *Insley* v. *United States*, 150 U. S. 512, 515; *Perego* v. *Dodge*, 163 U. S. 160, 164; 1 Daniell's Chan. Pl. & Pr. (4th ed.) p. 555. It is necessary, therefore, to notice more in detail the allegations in the bill. That sets forth land grants to the Atlantic and Pacific Railroad Company, the Southern Pacific Railroad Company and the Texas Pacific Railroad Company. It shows the acceptance by the Atlantic and Pacific Company of its grant, the filing of its maps of definite location, a failure to complete its road within the State of California, an act of Congress forfeiting the lands along the line of said road within that State, a claim of the Southern Pacific Company to some of those lands, the erroneous patenting of them to that company, a demand for a reconveyance, and the acts of Congress in respect to the adjustment of railroad land grants. The bill further alleges that more than one thousand persons, among whom are the individual defendants named in the bill, who are sued as representatives of the class, had purchased by immediate or mesne conveyances from the Southern Pacific Company certain of those lands specifically described in Exhibit A; that all these purchasers claim an interest in the lands, but the nature and extent of their claims are unknown; that a prior suit, brought to vacate and annul patents, included those lands, and had been dismissed as to them without prejudice, upon the claim of the Southern Pacific Company that it had conveyed them to *bona fide* purchasers. In an amendment to the bill is a prayer (in order to secure an accounting with the railroad company) for a statement of the sales of these tracts, with the names of the

purchasers, dates of sales, purchase prices and amounts paid. The bill also alleges that there is a dispute between the railroad company and the persons purchasing or contracting with it in respect to the validity of the title conveyed, or attempted to be conveyed, by the company; avers that the United States has no desire to question the title of *bona fide* purchasers, but on the contrary seeks to have such title confirmed. It prays for a determination of the tracts sold to *bona fide* purchasers, to the end that the titles thereto may be confirmed, for a decree vacating and annulling the patents for any lands not so sold, and quieting the title of the United States thereto, and that the railroad company be required to account to the United States for the value of the lands sold to *bona fide* purchasers, or such sum as had been received by the company from those sales, not exceeding $1.25 per acre, and for such other and further relief as is just and equitable.

It is contended by the railroad company that this is merely an action in assumpsit to recover the amount claimed to be due for the lands patented to and sold by it to *bona fide* purchasers. But this ignores the full scope of the suit. The bill asked cancellation of the patents and a quieting of the title of the plaintiff to those lands still held by the company, or to *bona fide* purchasers ~~unsold~~. It prayed a discovery of all sales and conveyances, with the dates of the sales and the amounts received thereon. It also sought a confirmation specifically of the titles of *bona fide* purchasers, and finally an accounting with and recovery from the company. A cancellation of patents and a quieting of title is obtainable in equity. *Hughes* v. *United States*, 4 Wall. 232; *Moore* v. *Robbins*, 96 U. S. 530; *Mullan* v. *United States*, 118 U. S. 271; *Williams* v. *United States*, 138 U. S. 514; *Germania Iron Company* v. *United States*, 165 U. S. 379. It is true no decree was entered for the cancellation of any patents, and that matter was thus eliminated from the litigation. But the confirmation of the title of specific tracts to *bona fide* purchasers, which did pass into decree, is equally within the jurisdiction of a court of equity. While discovery is now seldom the object of a suit in equity, and doubtless would not uphold such a suit when the full information was obtainable by proceedings at law, yet it was a well recognized ground of equity jurisdiction, (*Kennedy* v. *Creswell*, 101 U. S. 641, 645; 1 Story's Eq. Juris. 11th ed. secs. 689 and following; 1 Pomeroy's Eq. Juris. sec. 193 and cases cited in notes,) and whether in any given case a court of equity would be justified in acting is a question for its determination. It is unnecessary to determine whether, if properly challenged, the allegations in this bill were sufficient. Probably not. *United States* v. *Bitter Root Development Company*, *ante*, p. . It is enough that discovery was sought, that discovery is not obtainable in an action at law, but only in a suit in equity. It may be that in order to support a recovery from the railroad company it was not necessary that there

be a formal confirmation of the titles of the purchasers from it, or that the purchasers be made parties defendant, yet it was competent for the court under the pleadings to enter such a decree, and the Government was justified in asking for it. Indeed, such action seems to have been contemplated by the statute, for in the second section of the act of March 2, 1896, it is provided: "An adverse decision by the Secretary of the Interior on the *bona fides* of such claimant shall not be conclusive of his rights, and if such claimant, or one claiming to be a *bona fide* purchaser, but who has not submitted his claim to the Secretary of the Interior, is made a party to such suit, and if found by the court to be a *bona fide* purchaser, the court shall decree a confirmation of the title, and shall render a decree in behalf of the United States against the patentee, corporation, company, person, or association of persons for whose benefit the certification was made for the value of the land as hereinbefore provided."

If only an action at law had been brought to recover the value of these lands from the railroad company, unless the verdict had been for the full amount claimed, $1.25 an acre, or unless there had been specific findings of fact showing the particular tracts on account of which recovery was given, it would be open to grave doubt whether any titles would be confirmed, even by inference, and a cloud would be left hanging over the titles of each of these purchasers. Clearly the case here presented was within the jurisdiction of a court of equity, and if there was any objection to that jurisdiction it should have been made *in limine* and not after pleadings had been perfected and proofs taken.

Passing to the other question, it is charged in the bill that these statutes constituted a valid contract between the Government and the railroad company. Now whether that be strictly true we need not stop to consider. It is enough that upon the facts the Government was entitled to recover from the company. Erroneously and by mistake the officers of the Government executed patents to the railroad company conveying the legal title to the lands. The railroad company accepted such title and subsequently conveyed the lands to parties who dealt with it in good faith. When by mistake a tract of land is erroneously conveyed, so that the vendee has obtained a title which does not belong to him, and before the mistake is discovered the vendee conveys to a third party purchasing in good faith, the original owner is not limited to a suit to cancel the conveyances and re-establish in himself the title, but he may recover of his vendee the value of the land up to at least the sum received on the sale, and thus confirm the title of the innocent purchaser. The conveyance to the innocent purchaser is equivalent to a conversion of personal property. Irrespective, therefore, of the act of Congress the Government had the right, when it found that these lands had been erroneously

patented to the railroad company and by it sold to persons who dealt with it in good faith, to sue the railroad company and recover the value of the lands so wrongfully received and subsequently conveyed. The acts of Congress really inure the benefit of the railroad company and restrict the right of the Government, for they provide that the recovery shall in no case be more than the minimum Government price. In other words, the Government asks only its minimum price for public land, no matter what the value of the tracts or the amounts received by the company may be.

It may be noticed in this connection that in no case was the value of any land sold fixed in the decree above the sum received by the company therefor, and that in many instances that sum exceeded the minimum price of $1.25 per acre. It may also be noticed that by stipulation it appears that within the indemnity limits there still remains a large body of lands from which the railroad company can select lands in lieu of those involved in the suit.

We see nothing in this decision of which the railroad company can complain. The decree of the Circuit Court of Appeals is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.